

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of:)
)
Lakedale Telephone Company)
)
)
Certification to Operate an)
Open Video System)
)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2003

Released: June 6, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On May 28, 2003, Lakedale Telephone Company ("Lakedale") filed an application for certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act of 1934 ("Communications Act") and the Commission's rules.¹ Lakedale seeks to operate an open video system in Maple Lake, Minnesota (the "Service Area").² In accordance with our procedures,³ the Commission published notice of receipt of the Lakedale certification application⁴ and posted the application on the Internet.⁵ Sherburne/Wright County Cable Communications Commission ("SWCCCC") filed a "Motion to Accept Filing as Timely Filed" and accompanying comments.⁶

¹ 47 U.S.C. § 573(a)(1); 47 C.F.R. § 76.1502.

² The Service Area for which Lakedale seeks certification in Minnesota is Maple Lake, CUID MN 0456. Lakedale previously sought to operate an open video system in Wright County, Minnesota. The service area for which Lakedale sought certification in that application was Maple Lake. Lakedale's application for certification to operate an open video system in Wright County was denied. *See Lakedale Telephone Company*, DA-03-1096 (MB rel. April 4, 2003).

³ *See Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems*, 11 FCC Rcd 18223, 18247 (1996) ("Second Report and Order").

⁴ *See Public Notice*, "Lakedale Telephone Company Files An Application For Open Video System Certification," DA 03-1813 (MB rel. May 28, 2003).

⁵ The Lakedale application is available *via* the Internet at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

⁶ SWCCCC requests that its comments be considered as timely filed because of its connection to Lakedale's previously denied request to operate an open video system in Wright County. *See supra* n.2. SWCCCC filed comments in that proceeding. Lakedale now has filed a statement in its current application and SWCCCC argues that it constitutes a reply to its earlier comments. As such, SWCCCC requests that the Commission accept its comments as timely filed in relation to the last proceeding. We will grant SWCCCC's motion in the interest of having the most complete record possible in this proceeding.

2. Pursuant to Section 653(a)(1) of the Communications Act, any entity meeting the requirements may obtain certification to operate an open video system.⁷ In light of the brief period (ten days) for Commission review of certification filings, the Commission concluded that Congress intended there to be a streamlined certification process.⁸ Open video system operators may apply for certification at any point prior to the commencement of service. Open video system operators must obtain certification prior to the commencement of service, allowing sufficient time to comply with the Commission's requirements regarding notifications that applicants must provide to potential programming providers.⁹

3. As part of the certification process, the applicant must acknowledge and accept the obligations associated with operation of an open video system and must provide certain information regarding its proposed system.¹⁰ To obtain certification, an applicant must file FCC Form 1275, which requires, among other things: (a) a statement of ownership, including a list of all affiliated entities;¹¹ (b) a representation that the applicant will comply with the Commission's regulations under Section 653(b) of the Communications Act;¹² (c) a list of the names of the communities the applicant intends to serve; (d) a statement of the anticipated type and amount of capacity that the system will provide; and (e) a statement as to whether the applicant is a cable operator applying for certification within its cable franchise area.

III. DISCUSSION

4. Lakedale has submitted an application on FCC Form 1275 for certification to operate an open video system in the Service Area. We have reviewed the information contained in Lakedale's application. As required by Form 1275, the Lakedale application provides the following: company information and a separate statement of ownership listing affiliated entities; eligibility and compliance representations; and system information and verification statements. Lakedale also confirmed that it served its application upon the designated telecommunications officials in each of the communities involved.

5. In an earlier decision, Lakedale's application was denied because of unresolved issues

⁷ See 47 U.S.C. § 573(a)(1); 47 C.F.R. § 76.1501. An operator of a cable system however, generally may not obtain such certification within its service area unless it is subject to "effective competition" as defined in Section 623(1)(l) of the Communications Act, 47 U.S.C. § 543(1)(l). The effective competition requirement does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area.

⁸ *Second Report and Order*, 11 FCC Rcd at 18243.

⁹ *Id.* at 18247; 47 C.F.R. § 76.1502(a). See also *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, 14 FCC Rcd 19700, 19705 (1999) (deleting the pre-construction certification requirement from Section 76.1502(a) of our rules).

¹⁰ *Second Report and Order*, 11 FCC Rcd at 18245-46.

¹¹ For purposes of determining whether a party is an affiliate, we have adopted the definitions contained in the notes to Section 76.501 of our rules, 47 C.F.R. § 76.501, with certain modifications. 47 C.F.R. § 76.1500(g). Generally, we will consider an entity to be an open video system operator's "affiliate" if the open video system operator holds 5% or more of the entity's stock, whether voting or non-voting. *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems*, 11 FCC Rcd 20227, 20235 (1996) ("*Third Report and Order*"); 47 C.F.R. § 76.1500(g).

¹² 47 U.S.C. § 573(b). This provision sets forth the Commission's requirements regarding non-discriminatory carriage; just and reasonable rates, terms and conditions; a one-third capacity limit on the amount of activated channel capacity on which an open video system operator may distribute programming when demand for carriage exceeds system capacity; channel sharing; sports exclusivity, network non-duplication and syndicated exclusivity; and non-discriminatory treatment in presenting information to subscribers. See also 47 C.F.R. § 76.1502(a).

relating to whether Lakedale is cable operator within the Service Area and whether its application was complete and accurate.¹³ The Commission's rules provide that any person may obtain a certification to operate an open video system except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to effective competition.¹⁴

6. In its instant application for certification, Lakedale asserts that it is a local exchange carrier that provides telephone service in Annandale, Minnesota and surrounding areas and that it is not a cable operator.¹⁵ Lakedale states that the reason it has marked "N/A" on Section C(1) of Form 1275 is that Lakedale is not the operator of a cable system, much less the operator of a cable system in the community affected by its application, Maple Lake.¹⁶ Lakedale states that its only video related operations consist of another open video system in Fairhaven Township, Minnesota and the City of South Haven, Minnesota, for which the Commission already has granted certification.¹⁷ As the operator of another open video system, Lakedale asserts that it cannot be considered the operator of a cable system because the Commission's rules exclude an open video system from its definition of a cable system.¹⁸ Furthermore, Lakedale argues that because it has no operations in Maple Lake at all, it cannot be considered the operator of a cable system in that community.¹⁹

7. Lakedale also states that none of its affiliates are cable operators in Maple Lake.²⁰ SWCCCC previously asserted that Lakedale affiliate, WH LINK, LLC, is a cable operator because it has applied for cable franchises with local franchising authorities.²¹ Lakedale denies this claim and states that WH LINK is an open video system operator²² and cannot be considered the operator of a cable system because the Commission's rules exclude such operations from its definition of cable systems.²³ Moreover, Lakedale states that WH LINK has no operations of any kind in Maple Lake.²⁴

8. Lakedale asserts that it has properly identified all of its affiliates and none operate a cable system in Maple Lake.²⁵ Responding to earlier comments filed by SWCCCC, Lakedale denies that it is an affiliate of either Sherburne Telephone Company or Hutchinson Telephone Company.²⁶ Moreover,

¹³ See *Lakedale Telephone Company*, DA-03-1096 at 3 (MB rel. April 4, 2003).

¹⁴ See 47 C.F.R. § 76.1501. The rule further provides that the effective competition requirement does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area. *Id.*

¹⁵ Lakedale Application Statement at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3. See *Lakedale Telephone Company*, DA 03-863 (MB rel. March 21, 2003).

¹⁸ *Id.* See 47 C.F.R. § 76.5(a)(4).

¹⁹ *Id.* See 47 C.F.R. § 76.1501.

²⁰ *Id.* at 3.

²¹ See *Lakedale Telephone Company*, DA 03-1096 at 3 (MB rel. April 4, 2003).

²² See *WH LINK, LLC*, 16 FCC Rcd 9439 (MB 2001).

²³ Lakedale Application Statement at 4; 47 C.F.R. § 76.5(a)(4).

²⁴ *Id.* Lakedale also notes that SWCCCC asserts that WH LINK and Lakedale, along with Sherburne Telephone Company, receive video signals from Lakedale affiliate Broadband Visions. Lakedale argues that its video signal must come from somewhere, but this does not support SWCCCC's allegation that Lakedale is a cable operator in Maple Lake or elsewhere. See Lakedale Application Statement at 4, n.1.

²⁵ *Id.* at 5.

²⁶ *Id.*

despite SWCCCC's allegation, Lakedale states that it did list Heart of the Lakes Cable, Inc. as an affiliate in its original application.²⁷ Lakedale asserts that Heart of the Lakes is not a cable operator in Maple Lake, but in Annandale, Minnesota, which is not the community at issue in this case.²⁸

9. SWCCCC's comments filed opposing Lakedale's instant certification application contend that Lakedale is a cable operator in Maple Lake because its affiliates have applied for cable franchises in nearby towns.²⁹ SWCCCC also argues that if Lakedale is coming to Maple Lake to deliver cable service as an open video system operator, it should be considered a cable operator.³⁰ In addition, SWCCCC asserts that Lakedale lacks candor because it listed "Heart of the Lakes Cable, Inc." rather than "Heart of the Lakes Cable Systems, Inc." in its application.³¹

10. We find SWCCCC's comments raise no issues that would prevent grant of the instant application. Lakedale has demonstrated that it is not a cable operator of a cable system, and, in particular, is not the operator of a cable system in Maple Lake. Moreover, the fact that some Lakedale affiliates have cable franchises or are applying for cable franchises in other communities has no effect on Lakedale's certification as an open video system operator in Maple Lake. The Commission's rules also exclude Lakedale in its capacity as an open video system operator from qualifying as a cable operator.³² Finally, the omission of the word "system" from the title of one of Lakedale's affiliates does not constitute lack of candor.

11. We find that Lakedale has provided the requisite facts and representations concerning the open video system it intends to operate and has certified that it "agrees to comply and remain in compliance with each of the Commission's regulations" under Section 653(b) of the Communications Act. We note that if any representation in the Lakedale certification proves to be materially false or materially inaccurate, the Commission retains the authority to revoke Lakedale's certification or impose such other penalties it deems appropriate, including forfeiture.

²⁷ *Id.*

²⁸ *Id.* at 6. Lakedale states that another affiliate, EN-TEL, LLC, operates a cable system in Wilmar, Minnesota, but again this is not the community at issue in this proceeding.

²⁹ SWCCCC Comments at 2.

³⁰ *Id.*

³¹ *Id.* (emphasis original).

³² See 47 C.F.R. § 76.5(a)(4).

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that the application of Lakedale Telephone Company for certification to operate an open video system in the Service Area³³ **IS GRANTED**.

12. This action is taken by the Deputy Chief, Policy Division, Media Bureau, pursuant to the authority delegated by Section 0.283 of the Commission's Rules.³⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
Deputy Chief, Policy Division
Media Bureau

³³ See *supra* n. 2, listing the community contained within the Service Area.

³⁴ 47 C.F.R. § 0.283.